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ACTION EA-14

INFO OCT-01 ADP-00 CIAE-00 DODE-00 PM-09 H-02 INR-10 L-03

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AID-20 RSR-01 /102 W

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 4200

CINCPAC

CINCPACREPPHIL

INFO AMEMBASSY BANGKOK

AMEMBASSY JAKARTA

AMEMBASSY KUALA LUMPUR

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LIMITED OFFICIAL USE SECTION 1 OF 2 MANILA 3776

CINCPAC FOR POLAD

E. O. 11652: N/ A

TAGS: PINT, PGOR, RP

SUBJECT: SUPREME COURT AGAIN AVOIDS CONSTITUTIONAL CHALLENGE

REF MANILA 0876 (NOTAL)

SUMMARY: SUPREME COURT HAS EFFECTIVELY GIVEN JUDICIAL
RECOGNITION TO PRESIDENT MARCOS' PROCLAMATION OF 1973
CONSTITUTION. IN SERIES OF SPLIT AND INCOMPLETE VOTES COURT
SUGGESTED THAT RATIFICATION WAS NOT VALID, BUT REFUSED TO GIVE
RELIEF TO PETITIONERS WHO HAD CHALLENGED PRESIDENT' S
ACTION IN PROCLAIMING NEW CONSTITUTION. THIS VOTING
RECORD, COUPLED WITH PROSPECTIVE CHANGES IN NUMBERS AND
AND COMPOSITION OF COURT, SUGGEST THAT IT WILL NOT
PRESENT ANY SIGNIFICANT OBSTACLE TO GOVT OBJECTIVES.
END SUMMARY.

1. PHILFQPINE SUPREME COURT VOIDED LAST OUTSTANDING
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LEGAL CHALLENGES TO 1973 CONSTITUTION IN OPINIONS ANNOUNCED APRIL 2. EMBASSY HAS NOT YET SEEN TEXT OF COURT FINDINGS, WHICH ACCORDING TO PRESS TOTALS 246 PAGES, AND INCLUDES NUMEROUS INDIVIDUAL OPINIONS. GENERAL THRUST OF OPINIONS AND COURT VOTES AS REPORTED BY PRESS, HOWEVER, WOULD APPEAR FORECLOSE POSSIBILITY THAT JUDICIAL REMEDIES MIGHT BE OBTAINED BY OPPONENTS OF NEW CONSTITUTION.

2. COURT WAS ACTING ON FIVE PETITIONS, CHALLENGING PRESIDENT MARCOS' JANUARY 17 PROCLAMATION THAT CONSTITUTION HAD COME INTO EFFECT THROUGH CITIZENS ASSEMBLIES PROCEDURES. PETITIONERS INCLUDED MOST MAJOR FIGURES OF OPPOSITION LIBERAL PARTY, AS WELL AS EX- NACIONALISTA SENATOR SALVADOR LAUREL, AND SEVERAL INDEPENDENT POLITICAL FIGURES, E. G. "SOC" RODRIGO, CHARITO PLANAS, ALEJANDRO ROCES.

3. EX- SENATORS TANADA AND SALONGA WERE BOTH PRINCIPALS AND ADVOCATES IN FIVE DAYS OF ARGUMENTS FOR PETITIONERS WHICH SUPREME COURT HEARD IN MID- FEBRUARY. THEY ASKED THAT COURT: (A) DECLARE NULL AND VOID PROCLAMATION 1102 BY WHICH PRESIDENT MARCOS HAD ANNOUNCED RATIFICATION OF 1973 CONSTITUTION, AND CONFIRM 1935 CONSTITUTION STILL IN EFFECT, AND (B) RECALL CONGRESS TO SESSION. SEVERAL COURT OBSERVERS FELT THAT TANADA AND SALONGA HAD ALL THE BEST OF ARGUMENTS, BUT MEDIA COVERAGE WAS MINIMAL, AND IMPACT FOR GENERAL PUBLIC WAS PROBABLY COMMENSURATELY LIMITED.

4. PRESS REPORTS INDICATE SUPREME COURT CONSIDERATION INCLUDED VOTES ON FIVE KEY QUESTIONS:

(A) COULD THE PRESIDENT'S PROCLAMATION OF THE 1973 CONSTITUTION BE CONSIDERED BY THE COURT ? RESULT: SIX JUSTICES HELD THAT IT COULD BE CONSIDERED, THREE VOTED THAT IT WAS AN ESSENTIALLY POLITICAL ACTION, NOT SUBJECT TO JUDICIAL CONSIDERATION.

(B) HAS 1973 CONSTITUTION BEEN RATIFIED VALIDLY? RESULTS: SIX NO, THREE YES; ONE SEPARATE VIEW PRODUCED THE OPINION THAT WHILE THE PROCEDURES FELL SHORT OF CONSTITUTIONAL REQUIREMENTS, " IN A POLITICAL SENSE" THE PEOPLE MAY HAVE LIMITED OFFICIAL USE

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BEEN DEEMED TO HAVE VOTED FAVORABLY.

(C) DID THE PEOPLE ACQUIESCE IN THE 1973 CONSTITUTION?

RESULTS: FOUR YES, TWO NO, AND FOUR SAID THEY WERE NOT
COMPETENT TO RULE ON THIS QUESTION.

(D) ARE THE PETITIONERS (TANADA, SALONGA ET AL) ENTITLED
TO RELIEF? RESULTS: SIX NO, FOUR YES.

(E) IS THE 1973 CONSTITUTION NOW IN FORCE? RESULTS:
FOUR YES, TWO NO, AND FOUR DID NOT VOTE.

5. THUS COURT PROGRESSED TO CONCLUSION THERE IS NO
FURTHER OBSTACLE TO CONSIDERING 1973 CONSTITUTION IN FORCE
AND EFFECT. ACCORDING PRESS, COURT OPINION WRITTEN BY
CHIEF JUSTICE CONCEPCION, STATED -- APPARENTLY WITH REFER-
ENCE TO DISMISSAL OF PETITIONS -- THAT " THIS BEING THE
VOTE OF THE MAJORITY THERE IS NO FURTHER JUDICIAL
OBSTACLE TO THE NEW CONSTITUTION BEING CONSIDERED IN FORCE
AND EFFECT." APPARENTLY REFERRING TO QUESTION OF WHETHER
CONSTITUTION COULD BE CONSIDERED IN EFFECT, IT CONCLUDED
" THERE WERE NOT ENOUGH VOTES TO DECLARE THAT THE NEW
CONSTITUTION WAS NOT IN FORCE."

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6. COMMENT: COURT S ACTION IN THIS CASE APPEAR CONSISTENT WITH APPROACH WHICH IT TOOK IN ITS JANUARY 22 ND OPINIONS (REFTEL) STRIKING DOWN EARLIER LEGAL CHALLENGES TO RATIFICATION OF NEW CONSTITUTION. FILIPINO SC JUSTICES PERFORMED REMARKABLE TIGHT- ROPE ACT IN GRANTING THAT PRESIDENT' S PROCLAMATION OF NEW CONSTITUTION COULD BE SUBJECT TO JUDICIAL REVIEW AND THAT NEW CONSTITUTION WAS NOT RATIFIED VALIDLY, WHILE AT SAME TIME DECLARING THAT PETITIONERS WERE NOT ENTITLED TO RELIEF. OBVIOUS CONCLUSION IS THAT COURT SOUGHT TO AVOID CONFRONTATION WITH PRESIDENT MARCOS, AND WAS DRIVEN TO SUBTERFUGES IN EFFORT TO PRESERVE ITS PUBLIC CREDIBILITY AND IMAGE. THUS, LAST LEGAL RESORT OF POLITICAL OPPOSITION TO CONSTITUTIONAL REVISION HAS APPARENTLY BEEN REMOVED.

7. VOTING RECORDS CAST SOME LIGHT ON PROCLIVITIES OF INDIVIDUAL JUSTICES AND FUTURE COMPLEXION OF COURT. MAKASIAR, ANTONIO AND ESGUERRA WENT RIGHT DOWN LINE FOR PRESIDENT, AND BARREDO MANAGED THE SAME RESULT IN MORE AMBIGUOUS TERMS. CHIEF JUSTICE CONCEPCION AND ZALDIVAR LIMITED OFFICIAL USE

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OPPOSED WITH EQUAL PREDICTABILITY, USUALLY SUPPORTED BY TEEHANKEE AND FERNANDO. CASTRO AND MAKALINTAL VOTED OCCASIONALLY WITH THE ANTIS BUT SWUNG TO THE GOVT POSITION ON CRUCIAL ISSUES. WITH JUDICIAL CHALLENGE TO 1973 CONSTITUTION APPARENTLY REMOVED, AND CHIEF JUSTICE CONCEPCION DUE TO RETIRE, MARCOS WILL BE ABLE TO APPOINT SIX JUSTICES (THE 1973 CONSTITUTION ENLARGES THE COURT FROM 11 -- WITH ONE VACANCY -- TO 15). THUS PROSPECTS ARE THAT THE JUDICIARY WILL NOT INTERPOSE ANY SERIOUS RESTRICTION TO MARCOS' PROGRAMS FOR FORESEEABLE FUTURE.
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